

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

CYNTHIA KAY NELSON

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CRIMINAL NO. 6:06-CR-44

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On August 28, 2007, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant Cynthia Kay Nelson. The government was represented by Richard Moore, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by attorney Wayne Dickey.

Defendant originally pleaded guilty to the offense of Conspiring to Import a Quantity of Marijuana, a Class D felony. The offense carried a statutory maximum imprisonment term of five (5) years. The United States Sentencing Guideline range, based on a total offense level of 13 and a criminal history category of II, was 15 to 21 months. On September 12, 2003, U.S. District Judge Frank Montalvo of the Western District of Texas sentenced Defendant to 15 months imprisonment followed by a term of two years supervised release, subject to the standard conditions of release, plus special conditions to include participation in a program approved by the Probation Officer for narcotic addiction or drug or alcohol dependency which may include testing and submission to an evaluation for mental health counseling as directed by the probation officer, and if deemed necessary, participation in a mental health program. On February 22, 2006, Defendant completed the term of imprisonment, and began her term of supervised release. Defendant's conditions of supervised release were modified on March 30, 2006, to include a condition that she abstain from the use of

alcohol.

In its petition, the government alleges, among other things, that Defendant violated her conditions of supervised release by committing the offense of public intoxication on January 5, 2007, and February 18, 2007; and by committing the offense of possession of marijuana under 2 ounces on February 18, 2007.

If the Court finds by a preponderance of the evidence that Defendant committed these violations, a statutory sentence of no more than two years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3). Section 7B1.1(b) of the Sentencing Guidelines indicates that when there is more than one violation of the conditions of supervision, or the violation includes conduct that constitutes more than one offense, the grade of the violation is determined by the violation having the most serious grade. Pursuant to Section 7B1.1(a) of the Sentencing Guidelines, violating a condition of supervision for possession of marijuana would be a Grade C violation, for which the Court may revoke Defendant's term of supervised release, or may extend the term of probation or supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of II, the Guideline imprisonment range for a Grade C violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the offense of public intoxication on January 5, 2007, and February 18, 2007; and also plead true to the offense of possession of marijuana under 2 ounces on February 18, 2007. In exchange, the government agreed to allow Defendant to plead true to these violations but not to others, and to recommend a sentence of 4 months.

Pursuant to the Sentencing Reform Act of 1984, and the agreement of the parties, the Court

RECOMMENDS that Defendant Cynthia Kay Nelson be committed to the custody of the Bureau of Prisons for a term of imprisonment of 4 months with no supervised release to follow. The court also **RECOMMENDS** that Defendant be placed in the Bryan Women's Facility in Bryan, TX, if eligible.

The parties have waived their right to object to the findings of the Magistrate Judge in this matter, so the Court will present this Report and Recommendation to District Judge Leonard Davis for adoption immediately upon issuance.

So ORDERED and SIGNED this 11th day of September, 2007.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE